



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 30, 1998

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR98-0831

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 113861.

The City of Garland (the "city") received a request for the arrest records of a certain individual. You state that there are two arrest reports which are responsive to the request, and that you have released one report in its entirety to the requestor. You contend, however, that portions of the remaining report are excepted from disclosure pursuant to section 552.108 of the Government Code.

Because the Act prohibits the release of confidential information and because its improper release constitutes a misdemeanor, the attorney general will raise section 552.101 on behalf of a governmental body, although the attorney general ordinarily will not raise other exceptions that a governmental body has failed to claim. See Open Records Decision Nos. 455 (1987) at 3, 325 (1982) at 1. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685.

The requestor in this case asked for all reports concerning a named individual. The request for all records of a named individual is a request for criminal history information ("CHRI"). CHRI

may be withheld from required public disclosure under common-law privacy if it meets the criteria articulated for section 552.101 of the Government Code by the Texas Supreme Court in *Industrial Found. of the South. v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). *See also* Gov't Code § 411.084 (prohibiting release of CHRI obtained from Department of Public Safety). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public.

In *United States Department of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749 (1989), the U.S. Supreme Court concluded that where an individual's CHRI is compiled or summarized by a governmental entity, the information takes on a character that implicates that individual's right of privacy in a manner that the same individual records in an uncompiled state do not. Therefore, we conclude that the arrest record you have submitted to this office must be withheld in its entirety under section 552.101 in conjunction with common-law privacy.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/cbh

Ref.: ID# 113861

Enclosures: Submitted documents

cc: Mr. Greg Stanberry
1633 Running River
Garland, Texas 75044
(w/o enclosures)